

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GEORGE O. MITCHELL,  
Plaintiff,

v.

HENRY RICHARDS,  
Defendant.

Case No. C05-5114RBL

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED *IN*  
*FORMA PAUPERIS*

Noted for August 12, 2005

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff is a resident at the Washington State Department of Social and Health Services' ("DSHS") Special Commitment Center ("SCC"). He has filed a civil rights complaint under 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis*.

To file a complaint and initiate legal proceedings, plaintiff must pay a filing fee of \$250.00 or file a proper application to proceed *in forma pauperis*. Because plaintiff has failed to respond to the court's order directing him to respond to the undersigned's second order to show cause regarding the remaining deficiencies in his motion (Dkt. #10), the undersigned recommends the court deny that motion.

DISCUSSION

By requesting the court to proceed *in forma pauperis*, plaintiff is asking the government to incur the court filing fee because he is allegedly unable to afford the costs necessary to proceed with his civil rights action. The court may permit indigent litigants to proceed *in forma pauperis* upon completion of a

1 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in  
2 denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),  
3 *cert. denied*, 375 U.S. 845 (1963).

4 On February 9, 2005, the Clerk received plaintiff's complaint and motion to proceed *in forma*  
5 *pauperis*. (Dkt. #1). Plaintiff stated in his motion that he had a total of \$40.00 in "life savings," and that he  
6 earned \$282.00 every two weeks working for DSHS. Plaintiff also stated he had credit card and child  
7 support totaling \$3,000.00, and made \$550.00 in payments on that debt every month.

8 Plaintiff did not state, however, whether he was legally obligated (i.e., by court order) to make any  
9 payments on his credit cards. He also did not provide any information on the amount of child support he  
10 was legally obligated to provide each month. In addition, the consent form plaintiff attached to his motion  
11 was not signed.

12 On February 16, 2005, the court ordered plaintiff to cure these deficiencies by filing no later than  
13 March 18, 2005, the following: (a) a written response explaining whether he was legally obligated to make  
14 payments on his credit card and/or child support debts, and, if so, in what amounts and how often he was  
15 required to do so; and (b) a signed copy of the written consent form required by Local Rule 3(b)(2). On  
16 March 11, 2005, plaintiff filed a signed copy of the written consent. (Dkt. #5).

17 Instead of also providing the additional financial information he was ordered to provide, on March  
18 14, 2005, plaintiff appealed the undersigned's order to show cause to the Honorable Franklin J. Burgess.  
19 (Dkt. #7). District Judge Burgess denied plaintiff's appeal on April 19, 2005. (Dkt. #9). Thus, on April  
20 25, 2005, the undersigned issued a second order to show cause, directing plaintiff to cure the remaining  
21 deficiencies in his motion, by filing a written response explaining whether he is legally obligated to make  
22 payments on his credit card and/or child support debts, and, if so, in what amounts and how often he is  
23 required to do so.

24 Once again, instead of responding to the second order to show cause, plaintiff filed another appeal  
25 to Judge Burgess, along with a request for voluntary recusal of the undersigned. (Dkt. #12). The appeal  
26 and request for recusal were both denied. (Dkt. #14 and #15). In denying his appeal, Judge Burgess also  
27 ordered plaintiff to respond to the undersigned's second order to show cause by no later than June 30,  
28 2005. (Dkt. #15). Judge Burgess further warned plaintiff that failure to so respond by that date would be


1 deemed a failure to properly prosecute this matter rendering dismissal appropriate. To date, plaintiff still  
2 has not responded to the undersigned's second order to show cause.

3 CONCLUSION

4 Because plaintiff has failed to respond to the undersigned's second order to show cause, the  
5 undersigned recommends the court deny his motion to proceed *in forma pauperis*. Accordingly, the  
6 undersigned also recommends the court dismiss plaintiff's complaint unless he pays the required \$250.00  
7 filing fee **within thirty (30) days** of the court's order.

8 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
9 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
10 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
11 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
12 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **August 12,**  
13 **2005**, as noted in the caption.

14 Dated this 15th day of July, 2005.

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17 Karen L. Strombom  
18 United States Magistrate Judge  
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